

LONG-TERM BUILDING DEVELOPMENT LEASE-test

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(Lease Area No. _____)
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
AIRSPACE GROUND LEASE

THIS LEASE, dated _____, 19__, is by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "Landlord," and _____, hereinafter called "Tenant."

W I T N E S S E T H

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by the Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises herein described for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

ARTICLE 1. SUMMARY OF LEASE PROVISIONS

Landlord: _____

Tenant: _____

Premises: _____

Located in the City of _____,

County of _____, State of California, commonly known as [Dist.-Co.-Rte.-Pcl. No. (FLA)], and more particularly described in Article 2.

Lease Term: _____ (_____), commencing

[date] _____ and expiring on _____ [date] _____. (Article 3)

Rent, Annual: \$ _____ Monthly: \$ _____ (Article 4)

Adjustment to Rent: (Article 4)

Method: _____

Frequency: _____

Security Deposit: \$ _____, (Article 21)

Use:

_____. (Article 5)

Fire Insurance: \$ _____. (Article 10)

Liability Insurance: \$ _____. (Article 10)

Address for Notices: (Article 22)

To Landlord _____

To Tenant _____

References in this Article 1 to the other Articles are for convenience and designate other Articles where references to the particular item contained in the Summary of Lease Provisions appear. Each reference in this Lease to the Summary of Lease Provisions contained in this Article 1 shall be construed to incorporate all of the terms

provided under the Summary of Lease Provisions. In the event of any conflict between the Summary of Lease Provisions and the balance of the Lease, the latter shall control.

ARTICLE 2. PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, those certain premises known as Airspace Lease Area No. _____, situated in the City of _____, County of _____, said land or interest therein being shown on the map or plat marked "Exhibit A," attached hereto and by this reference made a part hereof, and more particularly described as follows:

[INSERT LEGAL DESCRIPTION]

EXCEPTING THEREFROM all those portions of the above-described property occupied by the supports and foundations of the existing structure.

[Alternate Sentence No. 1]

[ALSO EXCEPTING THEREFROM all that portion of said property above a horizontal plane _____ feet below the underside of the superstructure of the existing structure which plane extends to the vertical boundaries of the above-described property, as shown on the diagram marked "Exhibit B," attached hereto and by this reference made a part hereof.]

[Alternate Sentence No. 2]

[ALSO EXCEPTING THEREFROM all that portion of said property above a horizontal plane _____ feet below the underside of the superstructure of the existing structure, which plane extends to a line _____ feet, measured horizontally, beyond the outermost protrusion of the superstructure of said existing structure, as shown on the diagram marked "Exhibit B," attached hereto and by this reference made a part hereof.]

[Alternate Sentence No. 3]

[ALSO EXCEPTING THEREFROM all that portion of said property above the plane of the underside of the superstructure of the existing structure, which plane extends to the vertical boundaries of the above-described property, as shown on the diagram marked "Exhibit B," attached hereto and by this reference made a part hereof.]

[Alternate Sentence No. 4]

[ALSO EXCEPTING THEREFROM all that portion of said property above the plane of the underside of the superstructure of the existing structure, which plane extends to a line _____ feet, measured horizontally, beyond the outermost protrusion of the superstructure of said existing structure, as shown on the diagram marked "Exhibit B," attached hereto and by this reference made a part hereof.]

This Lease is subject to (1) all easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances and other matters of record, (2) all matters discoverable by physical inspection of the Premises or that would be discovered by an accurate survey of the Premises and (3) all matters known to Tenant or of which Tenant has notice, constructive or otherwise including, without limitations, those shown on attached Exhibits "A" and "B".

ARTICLE 3. TERM

The term of this Lease shall be for _____ () years, commencing _____, and expiring _____.

ARTICLE 4. RENT

4.1 Minimum Monthly Rent

Tenant shall pay to Landlord as a minimum monthly rent, without deduction, setoff, prior notice, or demand, the sum of \$_____, per month in advance on the first day of each month, commencing on the date the term commences and continuing during the term. Minimum monthly rent for the first month or portion of it shall be paid on the day the term commences. Minimum monthly rent for any partial month shall be prorated at the rate of 1/30th of the minimum monthly rent per day.

All rent shall be paid to Landlord at the address to which notices to Landlord are given.

4.2 Adjustment to Rent [Alternate Clause No. 1, unlimited C.P.I.]

The minimum monthly rent provided for in Section 4.1 shall be subject to adjustment at the commencement of the _____ year of the term and every _____ year(s) thereafter, except in those years in which a reevaluation occurs under Section 4.4, as follows:

The base for computing the adjustment is the Consumer Price Index (All Urban Consumers - All Items) in the _____ area, published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the second month prior to the month in which the term commences or the month in which the most recent Calculation Period commences ("Beginning Index"). The period between each adjustment date, or between a reevaluation date and the next adjustment date, is referred to herein as the "Calculation Period". If the index published for the second month immediately preceding the month of the adjustment date ("Extension Index") has increased over the Beginning Index, the adjusted minimum monthly rent for the following _____ year period shall be set by multiplying the minimum monthly rent, as previously adjusted, by a fraction, the numerator of which is the Extension Index and denominator of which is the Beginning Index. If the Extension Index is equal to or less than the Beginning Index, no adjustment shall be made to the minimum monthly rent as previously adjusted. This automatic adjustment shall be calculated using the following formula:

$$A = M \times B/C$$

A = Adjusted minimum monthly rent.

M = Minimum monthly rent stated in Section 4.1, or in effect at the beginning of the current Calculation Period, unless different minimum monthly rent has been established by reevaluation under this Article 4 or by operation of the provisions of Articles 13, 14 or 15, in which case the most recently created rate shall apply.

B = "Extension Index," the Index published for the second month prior to the month in which each rental rate adjustment is to become effective.

C = "Beginning Index," the Index published for the second month prior to the month in which the term commences or in which the current Calculation Period commences.

In no event shall the minimum monthly rent be reduced by any calculation made pursuant to this section.

If the Index is changed so that the base year differs from that used in calculating the Beginning Index, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of this lease, any similar index published by any branch of the United States Government shall be used in order to obtain

substantially the same result as if the Index had not been discontinued or revised, and if no such other index is published, another index generally recognized as authoritative shall be substituted by Landlord.

4.2 Adjustment to Rent [Alternate Clause No. 2, C.P.I. with percentage limit]

The minimum monthly rent provided for in Section 4.1 shall be subject to adjustment at the commencement of the ____ () year of the term and every ____ () year(s) thereafter, except in those years in which a reevaluation occurs under this Article 4, as follows:

The base for computing the adjustment is the Consumer Price Index (All Urban Consumers - All Items) in the _____ area, published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the second month prior to the month in which the term commences or the month in which the most recent Calculation Period commences ("Beginning Index"). The period between each adjustment date, or between a reevaluation date and the next adjustment date, is referred to herein as the "Calculation Period". The adjusted minimum monthly rent for the following year period shall be set by multiplying the minimum monthly rent, as previously adjusted, by a fraction, the numerator of which is the Index published for the second month prior to the month of the adjustment date ("Extension Index") and the denominator of which is the Beginning Index. If the Extension Index has increased more than _____ percent (____ percent per year compounded annually for ____ years) over the Beginning Index, the adjusted monthly rent for the following _____ year period shall be deemed to have increased ____ percent during that Calculation Period. If the Extension Index has increased less than _____ percent (____ percent per year compounded annually for ____ years) over the Beginning Index, the adjusted monthly rent for the following ____ year period shall be deemed to have increased _____ percent during that Calculation Period.

This automatic adjustment shall be calculated using the following formula:

$$A = M \times B/C$$

A = Adjusted minimum monthly rent.

M = Minimum monthly rent in effect at the beginning of the current Calculation Period unless a different minimum monthly rent has been established by reevaluation under this Article 4 or by operation of the provisions of Articles 13, 14, or 15, in which case the most recently created rate shall apply.

B = "Extension Index", the Index published for the second month prior to the month in which each rental rate adjustment is to become effective.

C = "Beginning Index", the Index published for the second month prior to the month in which the term commences or in which the current Calculation Period commences.

In no event shall the minimum monthly rent be reduced by any calculation made pursuant to this section.

If the Index is changed so that the base year differs from that used as of the period immediately preceding the date on which the term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of this lease, any similar index published by any branch of the United

States Government shall be used in order to obtain substantially the same result as if the Index had not been discontinued or revised, and if no such other index is published, another index generally recognized as authoritative shall be substituted by Landlord.

4.2 Adjustment to Rent [Alternate Clause No. 3, percentage of gross income from retail sales]

(a) As used in this section, the following terms shall have the following meanings:

(i) "Accounting Year" shall mean the twelve-month period beginning on the first day of the first full calendar month following the commencement of the term of this lease and all succeeding twelve-month periods beginning on the anniversary of the commencement of the first Accounting Year.

(ii) "Gross Receipts" shall include:

(A) The sale price of all goods, wares, merchandise, and products sold on or from the leased premises by Tenant, whether for cash or credit and whether payment is actually made or not;

(B) The charges made by Tenant for the sale or rendition on or from the leased premises of services of any nature or kind whatsoever, whether for cash or credit and whether payment is actually made or not;

(C) All admission, entry, and other fees of any nature or kind charged by Tenant including but not limited to deposits accepted by Tenant;

(D) All sums deposited in any coin-operated vending machine or other device maintained on the leased premises, regardless of the ownership of the machine or device, or whether such sums are removed and counted by Tenant or others, and regardless of what percentage thereof Tenant is entitled to receive;

(E) The fair rental value of facilities used by Tenant or its employees for purposes other than the business purposes for which the leased premises are leased;

(F) All rents charged by Tenant to all subtenants of the leased premises, whether for cash or credit and whether payment is actually made or not.

(G) All other income received by Tenant as a result of its leasehold interest in the premises.

Gross Receipts shall exclude all sales and excise taxes payable by Tenant to federal, state, county, or municipal governments as a direct result of operations under this lease. Refunds for goods returned and deposits shall be deducted from current Gross Receipts upon return. Bad debt losses shall not be deducted from Gross Receipts. As used in this Section 4.2, the term "Tenant" shall include Tenant, its agents, subtenants, concessionaires, and licensees, and any person acting under contract with Tenant.

(b) Tenant shall pay to Landlord each Accounting Year, at the times and in the manner provided in subparagraph (c) of this section, the greater of:

(i) an amount of money equal to _____ percent (___%) of the Gross Receipts received by Tenant from the operations and business conducted on the leased premises during that Accounting Year, or

(ii) the minimum monthly rent provided for in Section 4.1, as adjusted in accordance with subparagraph (f) of this section and as reevaluated in accordance with Section 4.4.

(c) On or before the twentieth (20th) day of each calendar month, Tenant shall deliver to Landlord a correct statement of all applicable Gross Receipts for that portion of

the Accounting Year which ends with and includes the last day of the preceding calendar month. The statement shall be signed by Tenant or its responsible agent under penalty of perjury, and shall be in the form prescribed by the Landlord.

(i) Each statement shall indicate the total Gross Receipts for said portion of the Accounting Year, including:

(A) A breakdown of the Gross Receipts of each business conducted on the leased premises;

(B) The related itemized amounts of percentage rental computed as provided in subparagraph (a)(ii) and the total thereof;

(C) The total rental previously paid by Tenant for the Accounting Year within which the preceding month falls; and

(D) The rental due for the preceding month.

(ii) Concurrently with the delivery of each monthly statement, Tenant shall pay to Landlord the greater of the following two amounts:

(A) The total percentage rental computed for that portion of the Accounting Year ending with and including the last day of the preceding month (Item (i)(B), above), less total rentals previously paid for the Accounting Year (Item (i)(C), above), or

(B) The minimum monthly rent as defined in Section 4.1, as adjusted and reevaluated, multiplied by the number of months from the beginning of the Accounting Year to and including the preceding month, less total rentals previously paid for the Accounting Year (Item (i)(C), above).

(iii) Tenant's obligation to account to Landlord for percentage rent derived from the activity or occupancy of any subtenant of all or a portion of leased premises shall commence with the earliest of the following dates (regardless of whether Landlord has approved the sublease and regardless of whether a percentage rent was established by Landlord). The earliest of the following dates shall also be deemed the "due date" for purposes of Section 18.3 of this lease:

(A) Commencement date of sublease,

(B) Date of physical occupancy,

(C) Date of earliest activity (i.e.,

sale of goods, solicitation of business, construction or alteration by subtenant, etc.).

(d) Tenant shall, at all times during the term of this Lease, keep or cause to be kept, true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.

Landlord reserves the right to inspect and preapprove Tenant's method of keeping books, records and accounts of financial transactions in the operation of all business activities conducted in connection with this Lease. Tenant shall keep these books, records and accounts in the manner and in accordance with the standards prescribed by Landlord.

All retail sales and charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices which lock in sales totals and other transaction records, or with counters which are not resettable and

which record transaction numbers and sales details. Totals registered shall be read and recorded at the beginning and end of each day.

In any event of admission charges or personal property rentals, Tenant shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of said tickets, both issued and unissued.

Within ninety (90) days after the end of each Accounting Year, Tenant shall at its own expense submit to Landlord a balance sheet and income statement prepared or audited by a Certified Public Accountant, reflecting business transacted on or from the leased premises during the preceding Accounting Year. The Certified Public Accountant must attest that the balance sheet and income statement submitted are an accurate representation of Tenant's records as reported to the United States of America for income tax purposes. At the same time Tenant shall submit to Landlord a statement certified as to accuracy by a Certified Public Accountant wherein the total Gross Receipts for the Accounting Year are classified according to the categories of business established for percentage rental and for any other business conducted on or from the leased premises.

All Tenant's books of account and records related to this lease or to business operations conducted within or from the leased premises shall be kept and made available at one location within the limits of the County of _____. Landlord shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements of sales made and monies received. The cost of said audit shall be borne by Landlord unless the audit reveals an underpayment of more than two percent (2%) between the rent due as reported by Tenant in accordance with this lease and the rent due as determined by said audit. In the event of a greater underpayment, the full cost of the audit, as determined by Landlord, shall be paid by Tenant.

Upon the request of Landlord, Tenant shall promptly provide, at Tenant's expense, necessary data to enable Landlord to comply fully with any and every requirement of the State of California or the United States of America for information or reports relating to this lease and to Tenant's use of the leased premises. Such data shall include, if required, a detailed breakdown of Tenant's receipts and expenses.

(e) The percentage specified in subparagraph (b) of this section shall be subject to revision to be effective on the first day of the sixth, eleventh, sixteenth and twenty-first Accounting Years, and every five years thereafter, upon written demand of Landlord. Landlord may make this demand not more than one hundred eighty (180) days before and not more than one hundred eighty (180) days after the date which the revision shall become effective. In addition to the revision of said percentages, Landlord may require that any business activity allowed by this lease (or any revision hereof), not subject to percentage rentals in this lease, be made subject to percentage rentals at the revision dates aforementioned. Any revision in percentage rental rates determined after said dates which such revision is effective shall be retroactive to the beginning thereof.

Adjustments shall be made by negotiation; but if agreement is not reached within two (2) months after demand thereof, Landlord and Tenant shall each select a qualified real estate appraiser, and the two chosen shall select a third qualified real estate appraiser. After selection of the appraisers, Landlord shall immediately fix a time and place for a conference between the parties and the appraisers. Said conference shall be for the

purpose of agreeing upon and giving general instructions to the appraisers. Each of the appraisers selected by Landlord or Tenant shall, within forty-five (45) days after receiving instructions, deliver copies of a fully documented written report containing his opinion of the fair percentages when current to Landlord, Tenant and the third appraiser. The third appraiser shall analyze said appraisals, conducting such matters relating to the reports as either deems appropriate. Within five (5) days after such time, the appraisers shall make a final joint written determination of the fair percentage rental rates then current. If the appraisers are unable to agree, the final determination shall be made by the third appraiser.

The failure to meet any of the time limitations set forth in this subparagraph 4.2 (e) shall not prevent a revision in the percentage rental rate from occurring so long as Landlord requests the revision prior to the scheduled commencement date of the new percentage rental rate.

Landlord and Tenant shall pay the fee of the appraiser each has selected and shall each pay one-half the fee of the third appraiser.

(f) Effective the first day of the sixth, eleventh, sixteenth and twenty-first Accounting Years, and every five years thereafter, the minimum monthly rent, as defined in Section 4.1, shall be automatically adjusted to equal seventy-five percent (75%) of the average monthly rent actually paid by Tenant to Landlord for the preceding five (5) Accounting Years. In no event shall the minimum monthly rent be reduced by any calculation made pursuant to this subparagraph.

4.3 Percentage Rent [Alternate Clause No. 1, gross income from rents received]

(a) As used in this Section 4.3, the following terms shall have the following meanings:

(i) "Accounting Year" shall mean the twelve-month period beginning on the first day of the first full calendar month following the commencement of the term of this lease and all succeeding twelve-month periods beginning on the anniversary of the commencement of the first Accounting Year.

(ii) "Gross Receipts" shall include all of the following:

(A) The total amount of rents and other fees charged by Tenant to all subtenants of the leased premises, including nonrefundable deposits and other consideration passing from any subtenants to Tenant, whether for cash or credit and whether payment is actually made or not.

(B) The fair rental value of any portion of the leased premises used by Tenant or its employees.

(b) In addition to the minimum monthly rent provided for in Section 4.1, as adjusted in accordance with Section 4.2, and as reevaluated in accordance with Section 4.4, Tenant shall pay to Landlord an amount equal to _____ percent (____%) of the Gross Receipts of Tenant as defined herein.

(c) On or before the twentieth (20th) day of each calendar month, Tenant shall deliver to Landlord a correct statement in writing itemizing the total Gross Receipts for that portion of the Accounting Year which ends with and includes the last day of the preceding calendar month. The statement shall be certified as accurate and signed by Tenant or its responsible agent under penalty of perjury, and shall be in the form prescribed by Landlord.

(i) Each statement shall itemize the total Gross Receipts for said portion of the Accounting Year, including:

(A) A breakdown of the Gross Receipts received or due from each subtenant of the leased premises;

(B) An itemized accounting of Gross Receipts computed in accordance with subparagraph (a)(ii);

(C) The total percentage rental previously paid by Tenant for the Accounting Year within which the previous month falls; and

(D) The percentage rental due for the preceding month.

(ii) Concurrently with the delivery of each monthly statement, Tenant shall pay the total percentage rental computed for that portion of the Accounting Year ending with and including the last day of the preceding month (Item (i)(B), above, less the total percentage rentals previously paid for the Accounting Year (Item (i)(C), above).

(iii) Tenant's obligation to account to Landlord for percentage rent derived from the activity or occupancy of any subtenant of all or a portion of leased premises shall commence with the earliest of the following dates (regardless of whether Landlord has approved the sublease and regardless of whether a percentage rent has been established by Landlord). The earliest of the following dates shall also be deemed the "due date" for purposes of Section 18.3 of this lease:

(A) The date the sublease commences,

(B) The date the subtenant physically occupies the leased premises, or

(C) The date of the subtenant's earliest activity on the leased premises (e.g., sale of goods, solicitation of business, construction or alteration by subtenant, etc.)

(d) Tenant shall, at all times during the term of this Lease, keep or cause to be kept, true and complete books, records, and accounts of all financial transactions in the operation of all its business activities, of whatever nature, conducted pursuant to the rights granted by this Lease.

Landlord reserves the right to inspect and preapprove Tenant's method of keeping books, records and accounts of financial transactions in the operation of all business activities conducted in connection with this Lease. Tenant shall keep these books, records and accounts in the manner and in accordance with the standards prescribed by Landlord.

Within ninety (90) days after the end of each Accounting Year, Tenant shall at its own expense submit to Landlord a balance sheet and income statement prepared or audited by a Certified Public Accountant, reflecting the business transacted by Tenant on or from the leased premises during the preceding Accounting Year. The Certified Public Accountant must attest that the balance sheet and income statement submitted are an accurate representation of Tenant's records as reported to the United States of America for income tax purposes. At the same time Tenant shall submit to Landlord a statement certified as to accuracy by a Certified Public Accountant classifying the total Gross Receipts for the Accounting Year according to each subtenant and each activity conducted on the leased premises.

All Tenant's books of account and records and supporting source documents related to this Lease or to business operations conducted within or from the leased premises shall be kept in accordance with standard accounting procedures and made available at one location within the limits of the County of _____.

Landlord shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, and for the purpose of determining the accuracy of the monthly statements of Gross Receipts submitted by Tenant.

The full cost of said audit as determined by Landlord, shall be borne by Tenant if either or both of the following conditions exist:

(i) The audit reveals an underpayment of more than two percent (2%) between the rent due as reported and paid by Tenant in accordance with this Lease and the rent due as determined by said audit; or

(ii) Tenant has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with this Section 4.3 (d). The adequacy of records shall be determined at the sole discretion of Landlord's auditor.

Otherwise, Landlord shall bear the cost of said audit. 4.3 Percentage Rent [Alternate Clause No. 2, gross income from retail sales]

(a) As used in this Section 4.3, the following terms shall have the following meanings:

(i) "Accounting Year" shall mean the twelve-month period beginning on the first day of the first full calendar month following the commencement of the term of this lease and all succeeding twelve-month periods beginning on the anniversary of the commencement of the first Accounting Year.

(ii) "Gross Receipts" shall include all of the following:

(A) The sale price of all goods, wares, merchandise, and products sold on or from the leased premises by Tenant, whether for cash or credit and whether payment is actually made or not;.

(B) The charges made by Tenant for the sale or rendition on or from the leased premises or services of any nature or kind whatsoever, whether for cash or credit and whether payment is actually made or not;.

(C) All admission, entry, and other fees of any nature or kind charged by Tenant including but not limited to deposits accepted by Tenant;.

(D) All sums deposited in any coin-operated vending machine or other device maintained on the leased premises, regardless of the ownership of the machine or device, or whether such sums are removed and counted by Tenant or others, and regardless of what percentage thereof Tenant is entitled to receive;

(E) The fair rental value of facilities used by Tenant or its employees for purposes other than the business purposes for which the leased premises are leased;

(F) All rents charged by Tenant to all subtenants of the leased premises, whether for cash or credit and whether payment is actually made or not.

(G) All other income received by Tenant as a result of its leasehold interest in the premises.

Gross Receipts shall exclude all sales and excise taxes payable by Tenant to federal, state, county, or municipal governments as a direct result of operations under this lease. Refunds for goods returned and deposits shall be deducted from current Gross Receipts upon return. Bad debt losses shall not be deducted from Gross Receipts. As

used in this Section 4.3, the term "Tenant" shall include Tenant, its agents, subtenants, concessionaires, and licensees, and any person acting under contract with Tenant.

(b) In addition to the minimum monthly rent provided for in Section 4.1, as adjusted in accordance with Section 4.2, and as reevaluated in accordance with this Article 4, Tenant shall pay to Landlord an amount equal to _____ percent (____%) of the Gross Receipts from all business operations conducted on or from the leased premises.

(c) On or before the twentieth (20th) day of each calendar month, Tenant shall deliver to Landlord a correct statement of all applicable Gross Receipts for that portion of the Accounting Year which ends with and includes the last day of the preceding calendar month. The statement shall be signed by Tenant or its responsible agent under penalty of perjury, and shall be in the form prescribed by Landlord.

(i) Each statement shall indicate the total Gross Receipts for said portion of the Accounting Year, including:

(A) A breakdown of the Gross Receipts received of each business conducted on the leased premises;

(B) The related itemized amounts of percentage rental computed as provided in subparagraph (a)(ii) and the total thereof;

(C) The total percentage rental previously paid by Tenant for the Accounting Year within which the preceding month falls; and

(D) The percentage rental due for the preceding month.

(ii) Concurrently with the delivery of each monthly statement, Tenant shall pay to Landlord the total percentage rental computed for that portion of the Accounting Year ending with and including the last day of the preceding month (Item (i)(B), above), less total percentage rentals previously paid for the Accounting Year (Item (i)(C), above).

(iii) Tenant's obligation to account to Landlord for percentage rent derived from the activity or occupancy of any subtenant of all or a portion of leased premises shall commence with the earliest of the following dates (whether or not Landlord has approved the sublease and whether a percentage rent has been established by Landlord). The earliest of the following dates shall also be deemed the "due date" for purposes of Section 18.3 of this lease:

(A) The date the sublease commences,

(B) The date the subtenant physically occupies the leased premises, or

(C) The date of the subtenant's earliest activity on the leased premises (i.e., sale of goods, solicitation of business, construction or alteration by subtenant, etc.).

(d) Tenant shall, at all times during the term of this Lease, keep or cause to be kept, true and complete books, records, and accounts of all financial transactions in the operation of all its business activities, of whatever nature, conducted pursuant to the rights granted by this Lease. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.

Landlord reserves the right to inspect and preapprove Tenant's method of keeping books, records and accounts of financial transactions in the operation of all business activities conducted in connection with this Lease. Tenant shall keep these books, records and accounts in the manner and in accordance with the standards prescribed by Landlord.

All retail sales and charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices which lock in sales totals and other transaction records, or with counters which are not resettable and which record transaction numbers and sales details. Totals registered shall be read and recorded at the beginning and end of each day.

In any event of admission charges or personal property rentals, Tenant shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of said tickets, both issued and unissued.

Within ninety (90) days after the end of each Accounting Year, Tenant shall at its own expense submit to Landlord a balance sheet and income statement prepared or audited by a Certified Public Accountant, reflecting business transacted on or from the leased premises during the preceding Accounting Year. The Certified Public Accountant must attest that the balance sheet and income statement submitted are an accurate representation of Tenant's records as reported to the United States of America for income tax purposes. At the same time Tenant shall submit to Landlord a statement certified as to accuracy by a Certified Public Accountant classifying the total Gross Receipts for the Accounting Year according to the categories of business established for percentage rental and for any other business conducted on or from the leased premises.

All Tenant's books of account and records and supporting source documents related to this Lease or to business operations conducted within or from the leased premises shall be kept and made available at one location within the limits of the County of _____. Landlord shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements of sales and monies received. The cost of said audit shall be borne by Landlord unless the audit reveals an underpayment of more than two percent (2%) between the rent due as reported by Tenant in accordance with this lease and the rent due as determined by said audit. In the event of a greater underpayment, the full cost of the audit, as determined by Landlord, shall be paid by Tenant.

Upon the request of Landlord, Tenant shall promptly provide, at Tenant's expense, necessary data to enable Landlord to comply fully with any and every requirement of the State of California or the United States of America for information or reports relating to this lease and to Tenant's use of the leased premises. Such data shall include, if required, a detailed breakdown of Tenant's receipts and expenses.

(e) The percentage specified in subparagraph (b) of this section shall be subject to revision to be effective on the first day of the sixth, eleventh, sixteenth and twenty-first Accounting Years, and every five years thereafter, upon written demand of Landlord. Landlord may make this demand not more than one hundred eighty (180) days before and not more than one hundred eighty (180) days after the date on which the revision shall become effective. In addition to the revision of said percentages, Landlord may require that any business activity allowed by this lease (or any revision hereof), not subject to percentage rentals in this lease, be made subject to percentage rentals at the revision dates aforementioned. Any revision in percentage rental rates determined after said dates which such revision is effective shall be retroactive to the beginning thereof.

Adjustments shall be made by negotiation; but if agreement is not reached within two (2) months after demand thereof, Landlord and Tenant shall each select a qualified real estate appraiser, and the two chosen shall select a third qualified real estate appraiser. After selection of the appraisers, Landlord shall immediately fix a time and place for a conference between the parties and the appraisers. Said conference shall be for the purpose of agreeing upon and giving general instructions to the appraisers. Each of the appraisers selected by Landlord or Tenant shall, within forty-five (45) days after receiving instructions, deliver copies of a fully documented written report containing his opinion of the fair percentages when current to Landlord, Tenant and the third appraiser. The third appraiser shall analyze said appraisals, conducting such matters relating to the reports as either deems appropriate. Within five (5) days after such time, the appraisers shall make a final joint written determination of the fair percentage rental rates then current. If the appraisers are unable to agree, the final determination shall be made by the third appraiser.

The failure to meet any of the time limitations set forth in this subparagraph 4.3 (e) shall not prevent a revision in the percentage rental rate from occurring so long as Landlord requests the revision prior to the scheduled commencement date of the new percentage rental rate.

Landlord and Tenant shall pay the fee of the appraiser each has selected and shall each pay one-half the fee of the third appraiser.

4.4 Reevaluation of Minimum Monthly Rent

At the request of Landlord during the ____, ____, ____, and ____ years from the date of the commencement of the term, a fair market lease rate shall be determined in the manner set forth below and shall be established as the minimum monthly rent commencing on the following dates:

____ (Month) ____ (Day) ____ (Year)

____ (Month) ____ (Day) ____ (Year)

____ (Month) ____ (Day) ____ (Year)

____ (Month) ____ (Day) ____ (Year)

The minimum monthly rent established by this section shall be subject to the adjustment provided in Section 4.2. For the purpose of computing said adjustment, after the new minimum monthly rent has been established pursuant to this section, the Beginning Index shall be the Index published for the second month prior to the month in which new minimum monthly rent commences.

The term "fair market lease rate" means the highest lease rate estimated in terms of money which the leased premises, excluding improvements constructed by Tenant thereon, would bring if exposed for lease in the open market, with a reasonable time allowed to find a tenant, leasing with full knowledge of the purpose and uses to which the leased premises is being put and the restrictions on use contained in Section 5.1 of this lease.

The parties intend to establish the fair market lease rate through negotiation. However, if Landlord and Tenant have not agreed upon the fair market lease rate for the leased premises at least one-hundred eighty (180) days before the date of the scheduled commencement of the new minimum monthly rent as set forth above, then each party shall appoint an appraiser, who is a member of the American Institute of Real Estate Appraisers (M.A.I.) and who has appraised property put to commercial or industrial uses

in _____ County, and notify the other party of such appointment. Each party shall use its best efforts to give the notice of appointment to the other party at least one-hundred fifty (150) days before the said commencement date.

Landlord shall set the time and place for a conference between the parties hereto and said two appraisers, which conference shall be held within thirty (30) days of the receipt of notice of appointment by both parties. At such conference, the parties shall agree upon the general instructions to be given to said appraisers. The appraisers shall be instructed that in determining the fair market lease rate they shall consider the use to which the premises are being put and shall not consider the highest and best use for the premises without regard to the restrictions on use of the premises contained in the Lease. It is the intent of the Landlord and Tenant that the rent payable under this Lease not be less than the fair market rental value of the leased premises, and the purpose of this Section 4.4 is to assure the establishment of this rent and to prevent a bonus value from accruing to either party. The appraisers shall be instructed as to this intent. The general instructions shall not place any additional limitations upon the appraisal techniques to be employed by the appraisers in the evaluation of the rent.

Within forty-five (45) days after receiving said instructions, each of the appraisers shall deliver copies of a fully-documented signed written report containing an opinion of the fair market lease rate for the leased premises to Landlord and Tenant. When in receipt of both appraisals, Landlord shall set a time and place for a conference. Those to be in attendance at the conference shall include: (a) representatives of Landlord, (b) representatives of Tenant, and (c) the two appraisers. The parties shall endeavor to reach agreement on the adjusted rent.

If the parties cannot agree on the amount of the adjusted rent, the Landlord's and Tenant's appraisers shall select a third appraiser. Said third appraiser shall be allowed access to the two reports, shall prepare a third appraisal, and shall submit one copy of same to Landlord and Tenant within thirty (30) days of his selection as appraiser.

Landlord and Tenant shall each pay for their respective appraisals and, if a third appraisal is necessary, each shall pay one-half (1/2) of the fees and expenses for said third appraisal. The determination of the fair market lease rate for the leased premises by the third appraiser, as documented in his signed written report submitted to the parties, shall be binding on Landlord and Tenant. The signed report shall be received at least thirty (30) days before the date of the scheduled commencement of the new minimum monthly rent as set forth above or on such other date upon which the parties shall have agreed. It is the intent of Landlord and Tenant that the time limitations specified in this Section 4.4 are guidelines only and not mandatory. The failure to meet any of the time limitations set forth in this Section 4.4 shall not prevent a reevaluation from occurring so long as Landlord requests the reevaluation prior to the scheduled commencement date of the new minimum monthly rent.

If the fair market lease rate for the leased premises shall not have been determined prior to the date of the scheduled commencement of the new minimum monthly rent as set forth above, Tenant shall continue to pay the same rent as was being paid in the preceding period until a final determination has been made. Within thirty (30) days after such final determination is made, Tenant shall pay to Landlord the amount of difference between the rent actually paid during the period between the scheduled date of commencement of the new minimum monthly rent and the date the final determination is

made and the amount of rent which should have been paid had the determination of the new minimum monthly rent been timely. Such payment shall include interest thereon at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco from the date of the scheduled commencement of the new minimum monthly rent until payment is made. For the purposes of this section, the applicable Federal Reserve Board discount rate shall be that which exists on the date of the scheduled commencement of the new minimum monthly rent. In no case shall the minimum monthly rent reevaluated pursuant to this Section 4.4 be less than the minimum monthly rent set forth in Section 4.1, as adjusted by Section 4.2, unless said minimum monthly rent has been reduced pursuant to Articles 13, 14 or 15.

4.5 Landlord's Compensation upon Transfer or Refinancing of Tenant's Leasehold

(a) In the event that Tenant voluntarily assigns, transfers, subleases or encumbers any of Tenant's rights in the leased premises, and such assignment, transfer, sublease or encumbrance is one which is subject to Landlord's approval under Section 19.1, Tenant shall pay to Landlord compensation in connection with the transaction in accordance with the following schedule:

(i) Tenant shall pay to Landlord an amount equal to _____ percent (____%) of the gross sale price agreed upon by the parties in connection with any assignment, transfer, or sublease which is otherwise required to be submitted to Landlord for approval under the terms of this Lease.

(ii) In connection with any encumbrance of any of Tenant's interest in the leased premises, Tenant shall pay to Landlord an amount equal to _____ percent (____%) of the funds received by Tenant as a result of any such encumbrance in excess of an amount equal to the outstanding principal balance of the initial permanent financing obtained by Tenant following completion of construction of the improvements on the leased premises.

(b) "Gross sale price" as used in this Section 4.5, means the total consideration resulting from the assignment, transfer, or sublease of any portion of Tenant's interest in the leased premises determined by the total of cash payments to be made and the market value of all non-cash consideration to be received, including, but not limited to, stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments.

(c) Payment by Tenant of the amount of compensation required under this Section 4.5 is a condition to Landlord's giving its consent to any assignment, transfer, sublease or encumbrance which is subject to Landlord's approval under Section 19.1, and Landlord may withhold its consent to any such assignment, transfer, sublease or encumbrance until this compensation has been paid. In addition, before Landlord gives its consent to any such transaction, Tenant shall deliver to the assignee, transferee, subtenant or lender a written summary of all sums due and owing to Landlord under this section and shall deliver to Landlord a written acknowledgement by the assignee, transferee, subtenant or lender that said person affirms that the sums are due and owing to Landlord and that said person, except for a lender, accepts responsibility for ensuring that such sums are paid directly to Landlord.

4.6 Reevaluation on Change in Use

Landlord expressly reserves the right to establish a new minimum monthly rent in the manner provided in Section 4.4 as a condition to Landlord's approval of any use of

the leased premises not specifically permitted by Section 5.1 and as a condition to any amendment to or changes in the uses permitted by that section. If such a reevaluation is made, the provisions of Section 4.4 shall be followed except that in determining the fair market lease rate the appraisers shall also be instructed to consider the new uses to which the premises may be put as a result of Landlord's approval of those additional uses. If such a reevaluation is made, the time for all subsequent scheduled reevaluations under Section 4.4 shall be extended by the period elapsed between the most recent previous reevaluation and the reevaluation made under this section.

4.7 Reevaluation on Transfer [Optional Section]

Landlord expressly reserves the right to establish a new minimum monthly rent in the manner provided in Section 4.4 as a condition to Landlord's approval of any transfer, or assignment of this Lease or any subletting of all or any portion of the leased premises, except any subletting done in the ordinary course of Tenant's business which may be done without Landlord's prior consent under Article 19. If such a reevaluation is made, the time for all subsequent scheduled reevaluations under Section 4.4 shall be extended by the period elapsed between the most recent previous reevaluation and the reevaluation made under this section. Notwithstanding the foregoing, Landlord shall not have the right to require a reevaluation under this section with respect to any transfer made pursuant to the exercise of any foreclosure remedies by a Lender as provided in Article 19, nor shall any prior reevaluation made pursuant to this section, including any accompanying extension of future reevaluation dates under Section 4.4 be of any effect whatsoever with respect to such Lender or the purchaser of this Lease pursuant to the exercise of any such foreclosure remedies.

ARTICLE 5. USE

5.1 Specified Use

The Premises shall be used and occupied by Tenant only and exclusively for the purpose of [describe permitted uses in detail] and for no other purpose whatsoever without obtaining prior written consent of Landlord and the concurrence of the Federal Highway Administration. Landlord expressly reserves the right to establish a new minimum monthly rent in the manner provided in Sections 4.4 and 4.6 as a condition to Landlord's approval of any use of the leased premises not specifically permitted by this section.

5.2 Condition of Premises

Tenant hereby accepts the Premises in their condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Premises, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of the Premises or the suitability thereof for the conduct of Tenant's business, nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises except as provided in this Lease.

Except as may be otherwise expressly provided in this Lease, the taking of possession of the Premises by Tenant shall in itself constitute acknowledgement that the Premises are in good and tenantable condition, and Tenant agrees to accept the Premises in its presently existing condition "as is," and that the Landlord shall not be obligated to

make any improvements or modifications thereto except to the extent that may otherwise be expressly provided in this Lease.

Tenant represents and acknowledges that it has made a sufficient investigation of the conditions of the Premises existing immediately prior to the execution of this Lease (including investigation of the surface, subsurface and groundwater for contamination and hazardous substances) and is satisfied that the Premises will safely support the type of improvements to be constructed and maintained by Tenant upon the Premises, that the Premises are otherwise fully fit physically and lawfully for the uses required and permitted by this Lease and that Tenant accepts all risks associated therewith.

Tenant acknowledges that (1) Landlord has informed Tenant prior to the commencement of the term of this Lease that the Landlord does not know nor has reasonable cause to believe that any release of hazardous substance has come to be located on or beneath the Premises; (2) prior to the commencement of the term of this Lease, the Landlord has made available to Tenant, for review and inspection, records in the possession or control of the Landlord which might reflect the potential existence of hazardous substances on or beneath the Premises; (3) Landlord has provided Tenant access to the Premises for a reasonable time and upon reasonable terms and conditions for purposes of providing to Tenant the opportunity to investigate, sample and analyze the soil and groundwater on the Premises for the presence of hazardous substances; (4) by signing this Lease Tenant represents to Landlord that, except as otherwise may be stated on Exhibit "C" attached hereto and by this reference incorporated herein, Tenant does not know nor has reasonable cause to believe that any release of hazardous substance has come to be located on or beneath the Property and (5) with respect to any hazardous substance which Tenant knows or has reasonable cause to believe has come or will come to be located on or beneath the Premises, Tenant has listed the hazardous substance on attached Exhibit "C" and agrees promptly to commence and complete the removal of or other appropriate remedial action regarding the hazardous substance at no cost or expense to Landlord and in full compliance with all applicable laws, regulations, permits, approvals and authorizations. The phrase "hazardous substance," as used herein, has the same meaning as that phrase has under Section 25359.7 of the California Health and Safety Code.

Tenant agrees that, except as otherwise expressly provided in this Lease, Tenant is solely responsible without any cost or expense to the Landlord to take all actions necessary, off as well as on the premises to improve and continuously use the Premises as required by this Lease and in compliance with all applicable laws and regulations.

5.3 Compliance with Law

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance or governmental rule or regulation or requirements of duly constituted public authorities now in force or which may hereafter be in force, or with the requirements of the State Fire Marshal or other similar body now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall not allow the Premises to be used for any unlawful

purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

5.4 Petroleum Products

Tenant shall not install facilities for, nor operate on the land above or below a highway or freeway, a gasoline or petroleum supply station, nor shall the transportation or storage of gasoline or petroleum products be permitted under the structures, except those products stored within an operable vehicle for exclusive use by that vehicle.

5.5 Explosives and Flammable Materials

The premises shall not be used for the manufacture of flammable materials or explosives, or for any storage of flammable materials, explosives or other materials or other purposes deemed by Landlord to be a potential fire or other hazard to the transportation facility. The operation and maintenance of the leased premises shall be subject to regulations of Landlord so as to protect against fire or other hazard impairing the use, safety and appearance of the transportation facility. The occupancy and use of the area shall not be such as will permit hazardous or unreasonably objectionable smoke, fumes, vapors or odors to rise above the surface of the traveled way of the transportation facility.

5.6 Hazardous Materials

Hazardous materials are those substances listed in Division 4, Chapter 30, Article 9 of Title 22 of the California Code of Regulations or those which meet the toxicity, reactivity, corrosivity or flammability criteria of Article 11 of that Code, as well as any other substance which poses a hazard to health or environment. Except as otherwise expressly permitted in this Lease, Tenant shall not use, create, store or allow any hazardous materials on the premises. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted.

In no case shall Tenant cause or allow the deposit or disposal of any hazardous materials on the leased premises. Landlord, or its agents or contractors, shall at all times have the right to go upon and inspect the leased premises and the operations thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or the testing of soils or underground tanks on the premises.

Breach of any of these covenants, terms and conditions shall give Landlord authority to immediately terminate this Lease. It is the intent of the parties hereto that Tenant shall be responsible for and bear the entire cost of removal and disposal of hazardous materials introduced to the premises during Tenant's period of use and possession as owner, operator or Tenant of the premises. Tenant shall also be responsible for any clean-up and decontamination on or off the leased premises necessitated by the introduction of such hazardous materials on the leased premises. Tenant shall not be responsible for or bear the cost of removal or disposal of hazardous materials introduced to the premises by any party other than Tenant during any period prior to commencement of Tenant's period of use and possession of the leased premises as owner, operator or Tenant.

Tenant shall further hold Landlord, and its officers and employees, harmless from all responsibility, liability and claim for damages resulting from the presence or use of

hazardous materials on the premises during Tenant's period of use and possession of the premises.

5.7 Signs

Tenant shall not construct, erect, maintain or permit any sign, banner or flag upon the premises without the prior written approval of Landlord. Tenant shall not place, construct or maintain upon the premises any advertising media that include moving or rotating parts, searchlights, flashing lights, loudspeakers, phonographs or other similar visual or audio media. The term "sign" means any card, cloth, paper, metal, painted or wooden sign of any character placed for any purpose on or to the ground or any tree, wall, bush, rock, fence, building, structure, trailer or thing. Landlord may remove any unapproved sign, banner or flag existing on the premises, and Tenant shall be liable to and shall reimburse Landlord for the cost of such removal plus interest as provided in Section 22.11 from the date of completion of such removal.

5.8 Landlord's Rules and Regulations

Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall from time to time promulgate for the protection of the transportation facility and the safety of the traveling public. Landlord reserves the right from time to time to make reasonable modifications to said rules and regulations. The additions and modifications to those rules and regulations shall be binding upon Tenant upon delivery of a copy of them to Tenant.

5.9 Wrecked Vehicles

Tenant shall not park or store wrecked or inoperable vehicles of any kind on the leased premises.

5.10 Vending

No vending of any kind or character shall be conducted, permitted or allowed upon the Premises.

5.11 Water Pollution Control

Tenant shall fully conform to the requirements of the Department of Transportation statewide NPDES Storm Water Permit, Order No. 99-06-DWQ, NPDES No. CAS000003, adopted by the State Water Resources Control Board on July 15, 1999. This permit regulates storm water and non-storm water discharges associated with activities within Department of Transportation right of way. Tenant shall develop, implement, and maintain a Facility Pollution Prevention Plan (FPPP), describing the pollution prevention practices associated with activities on facilities located within the Department of Transportation right of way. Tenant shall comply with the statewide Permit by incorporating storm water management into its operational activities. The FPPP will accomplish compliance by implementing Best Management Practices (BMPs) described in the Department of Transportation Statewide Storm Water Management Plan (SWMP). Copies of the Permit and the Department of Transportation SWMP may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 98518, Telephone: (916) 445-3520. Copies of the Permit and the SWMP are also available for review upon request.

Tenant shall not allow the unauthorized discharge of storm water runoff to private or public storm water drainage systems.

Tenant must comply with State and Federal storm water pollution control standards, including those of the State Water Resources Control Board, and the lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding discharges of storm water to separate storm sewer systems or other watercourses under jurisdiction of the above agencies.

In order to minimize the discharge of pollutants, spilled, leaked fluids, and any other wastewater into the storm water drainage system, Tenant shall not allow vehicle or equipment washing, fueling, maintenance and repair on the Premises.

In order to minimize the discharge of pollutants to storm water resulting from contact with hazardous material, Tenant shall not allow the storage or stockpile of hazardous material on Premises.

Landlord, or its agents or contractors, shall at all time have the right to go upon and inspect the Premises and the operations thereon to assure compliance with the requirements herein stated. Inspection may include taking samples of substances and materials present for testing, and/or the testing of storm sewer systems or watercourses on the Premises.

ARTICLE 6. COMMENCEMENT AND COMPLETION OF INITIAL CONSTRUCTION

6.1 Commencement of Construction

Tenant shall commence construction of the improvements described in Tenant's final construction plans and detailed specifications within ___ calendar days of the date of execution of this Lease. For the purposes of this Article, construction shall be deemed to have commenced upon the issuance by Landlord of an encroachment permit under Section 7.1. In the event construction is not commenced within the time set forth herein, this Lease may be terminated by Landlord and thereafter be of no further force and effect.

6.2 Completion of Construction and Occupancy of Improvements

Construction of the improvements shall be completed consistent with the approved construction plans within _____ calendar days after the commencement of construction. Tenant shall not occupy or use any of the improvements until Tenant has received final building approval and a Certificate of Occupancy from the appropriate local agency and Landlord has issued to Tenant an executed Encroachment Permit Completion Notice. In the event Tenant violates any of the provisions of this section, this Lease may be terminated by Landlord and be of no further force and effect.

ARTICLE 7. REQUIREMENTS FOR CONSTRUCTION OR ALTERATION OF IMPROVEMENTS

7.1 Encroachment Permit

Tenant, prior to construction or alteration of any improvements on or of the leased premises, shall obtain an executed Encroachment Permit from Landlord.

Issuance by Landlord of an Encroachment Permit shall be contingent upon Tenant's providing the following:

(a) Final construction plans and detailed specifications. All such plans and specifications submitted by Tenant to Landlord shall be subject to the review and approval of Landlord, the State Fire Marshal and the Federal Highway Administration.

(b) Evidence of coverage that assures Landlord that sufficient monies will be available to complete the proposed construction or alteration. The amount of coverage shall be at least equal to the total estimated construction cost. Such coverage shall take one of the following forms:

- (1) Completion bond issued to Landlord as obligee.
- (2) Performance bond and labor and material bond or performance bond containing the provisions of the labor and material bond supplied by Tenant's contractor or contractors, provided said bonds are issued jointly to Tenant and Landlord as obligees.
- (3) Any combination of the above.

All bonds shall be issued by a company qualified to do business in the State of California and acceptable to Landlord. All bonds be in a form acceptable to Landlord and shall ensure faithful and full observance and performance by Tenant of all terms, conditions, covenants and agreements relating to the construction of improvements within the leased premises.

- (c) Liability insurance as provided in Section 10.2.
- (d) Fire insurance as provided in Section 10.3.
- (e) A copy of a building permit issued by the appropriate local jurisdiction.
- (f) A copy of Tenant's contract with the general contractor actually performing construction.
- (g) Note and Deed of Trust.
- (h) Loan escrow instructions, if any.
- (i) Final landscaping and irrigation plans and detailed specifications including a maintenance plan for litter removal, watering, fertilization and replacement of landscaping.
- (j) Evidence of compliance with the applicable provisions of all federal, state and local environmental statutes, laws, regulations and ordinances.

Tenant agrees to diligently apply for and meet all requirements for issuance of Encroachment Permit and Landlord agrees to not unreasonably withhold issuance of said Encroachment Permit. Tenant is obligated to deliver to Landlord the documents described in subdivisions (a) through (j) of this section regardless of whether an Encroachment Permit may have been issued inadvertently before these documents have been provided to Landlord.

7.2 Soil Testing

At Tenant's sole cost and expense, Tenant shall secure soil compaction tests and other tests as necessary for construction of Tenant's improvements and for the support of the improvements on the underlying land or structures thereon. Tenant shall notify Landlord of the location of all test borings, which shall not interfere in any manner with the operation of the facility by Landlord. Tenant hereby agrees that Landlord is making no representation regarding existing soil compaction or structural capability of the land or any existing structure thereon. Tenant shall save Landlord harmless of and from any loss or damage caused by inadequate soil compaction or other structural capacity for Tenant's proposed improvements.

7.3 Standard of Construction

Tenant agrees that any improvements or construction upon the premises shall: (a) be consistent with all fire safety requirements, (b) be subject to the approval of Landlord and the concurrence of the Federal Highway Administration, and (c) in every respect comply with the laws, ordinances and regulations, federal, state, municipal or otherwise, that may govern construction of the same. Tenant shall not construct or place on the leased premises any improvements which impair Landlord's ability to maintain, operate, use, repair or improve any part of the transportation facility situated on the leased premises or on adjoining real property. Tenant shall save Landlord harmless of and from any loss or damage caused by reason of the construction of said improvements.

7.4 "As-Built" Plans

Within ninety (90) days after completion of construction of improvements or alterations, Tenant shall furnish Landlord, at Tenant's expense, one set of "As-Built" plans, according to a scale and size designated by Landlord, showing said improvements as constructed in detail, including the location of underground and aboveground utility lines.

ARTICLE 8. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY

8.1 Ownership of Improvements During Term

All improvements constructed on the premises by Tenant as permitted or required by this Lease shall, during the term of this Lease, be and remain the property of Tenant; provided, however, that Tenant's rights and powers with respect to the improvements are subject to the terms and limitations of this Lease and Tenant's interest in such improvements shall terminate upon the expiration or earlier termination of this Lease. Following completion of construction, Tenant shall not remove any improvements from the premises nor waste, destroy or modify any improvements on the premises, except as specifically permitted by this Lease. At the expiration or termination of this lease, all improvements constructed on the premises by Tenant shall vest in Landlord. Tenant shall deliver said improvements to Landlord in good condition and repair, reasonable wear and tear excepted, without compensation to Tenant, any subtenant or third party, free and clear of all claims to or against them by Tenant, any subtenant or third party, and Tenant shall defend and hold Landlord harmless from all liability arising from such claims or from the exercise by Landlord of its rights under this section. In the event said improvements are not delivered to Landlord in good condition and repair, reasonable wear and tear excepted, Landlord shall make the necessary maintenance and repairs and Tenant shall be liable to and shall reimburse Landlord for any such expenditures made, plus interest as provided in Section 22.11 from the date of completion of work. Landlord and Tenant covenant for themselves and all persons claiming under or through them that the improvements are real property.

8.2 Removal of Personal Property and Ownership at Termination

At the expiration or earlier termination of this Lease, Landlord may, at Landlord's sole election, require the removal from the premises, at Tenant's sole cost and expense, of all personal property (other than fixtures), or of certain personal property (other than fixtures), as specified in the notice provided for below. A demand to take effect at the normal expiration of the term shall be effected by notice given at least thirty (30) days before the expiration date. A demand to take effect on any other termination of the term of this Lease shall be effectuated by notice given concurrently with notice of such

termination or within ten (10) days after such termination. Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of personal property which Tenant has failed to remove after demand pursuant to this Section 8.2.

Tenant may remove any personal property from time to time within forty-five (45) days of the expiration of the term. Tenant shall repair all damage (structural or otherwise) caused by any such removal. Any personal property not removed by Tenant within forty-five (45) days following expiration of the term shall be deemed to be abandoned by Tenant and shall, without compensation to Tenant, become the Landlord's property, free and clear of all claims to or against them by Tenant or any other person.

8.3 Removal of Improvements at Termination

Upon the expiration or earlier termination of this Lease, Landlord may, upon written notice, require Tenant to remove, at the sole cost and expense of Tenant, and not later than ninety (90) days after the expiration or earlier termination of this Lease, all structures, buildings and improvements of any kind whatsoever placed or maintained on the premises, whether below, on or above the ground by Tenant or others, including, but not limited to, foundations, structures, buildings, utility lines, switchboards, transformer vaults and all other service facilities constructed or installed upon the premises; and Tenant shall, upon the expiration or earlier termination of this Lease, immediately restore, and quit and peacefully surrender possession of the premises to Landlord in at least as good and usable condition, acceptable to Landlord, as the same was in at the time of first occupation thereof by Tenant or others, ordinary wear and tear excepted, and shall, in any event, leave the surface of the ground in a level, graded condition, with no excavations, holes, hollows, hills or humps. Should Tenant fail to so remove said structures, buildings and improvements and restore the premises, Landlord may sell, remove or demolish the same, and in the event of said sale, removal or demolition, Tenant shall reimburse Landlord for any cost or expense thereof in excess of any consideration received by Landlord as a result of such sale, removal or demolition.

ARTICLE 9. MAINTENANCE AND REPAIRS

9.1 Tenant's Obligations

Tenant, at its own cost and expense, shall maintain the leased premises, improvements and landscaping thereon, including fences, and guardrails heretofore, or hereafter erected, in first class order, repair and condition and in compliance with all requirements of law. Tenant shall also, at its own cost and expense, install or provide for the installation of all required lighting on the leased premises and shall maintain the lighting in first class order, repair and condition.

Landlord and Tenant recognize that because of the length of the term of this Lease it may be necessary for Tenant to perform certain substantial maintenance, repair, rehabilitation or reconstruction (hereinafter collectively referred to as "repair" or "repairs") of the improvements in order to ensure that the premises are kept in first-class order, repair and condition.

"First-class order, repair and condition", as used herein, shall mean the maintenance, repair, renovation or replacement of buildings, equipment, furniture, fixtures, landscaping and appurtenances necessary to keep the premises in efficient and attractive condition, given the nature and age of the improvements at any time during the term of this Lease. Landlord and Tenant do not intend by the immediately preceding sentence that a property item is not first-class merely because of ordinary and reasonable

wear and tear that does not materially and substantially reduce the attractiveness and utility of the item given the nature and age of the improvements at any time during the term of this Lease.

Tenant hereby expressly waives the right to make repairs at the expense of Landlord and the benefit of the provisions of Sections 1941 and 1942 of the California Civil Code or any successor thereto.

Tenant shall take all steps necessary to protect effectively the fences, guardrails, and the piers and columns, if any, of the structure from damage incident to Tenant's use of said premises and improvements, all without expense to Landlord. Tenant shall, at its own cost and expense, repair in accordance with Landlord's standards any damage to any property owned by Landlord, including, but not limited to, all fences, guardrails, piers and columns, caused by Tenant, subtenants, invitees or other third parties. At Tenant's request, Landlord will repair the damage to its property and Tenant agrees to reimburse Landlord promptly after demand for the amount Landlord has reasonably expended to complete the repair work.

Tenant shall designate in writing to Landlord a representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

9.2 Retention of Existing Improvements

Landlord may at its option retain existing State improvements including fencing, lighting and irrigation facilities. If Landlord elects to retain any improvements, Tenant shall remove same and deliver same to Landlord's nearest maintenance station at no cost to Landlord.

9.3 Landlord's Rights

In the event Tenant fails to perform Tenant's obligations under this Article, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the premises. If within thirty (30) days after Landlord sends written notice to repair, Tenant fails to do the work and diligently proceed in good faith to prosecute it to completion, Landlord shall have the right, but not the obligation, to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand plus interest as provided in Section 22.11 from the date of completion of such work to date of payment. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the premises by Tenant as a result of performing any such work.

ARTICLE 10. INSURANCE

10.1 Exemption of Landlord from Liability

This Lease is made upon the express condition that Landlord is to be free from all liability and claims for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever belonging, including Tenant, from any cause or causes resulting from the operation or use of the premises by Tenant, its agents, customers or business invitees. Tenant hereby covenants and agrees to indemnify and save harmless Landlord from all liability, loss, cost and obligation on account of any such injuries or losses.

10.2 Liability Insurance

Tenant shall at its own cost and expense procure and keep in force during the term of this Lease bodily injury liability and property damage liability insurance adequate to protect Landlord, its officers, agents and employees, against any liability to the public resulting from injury or death of any person or damage to property in connection with the area, operation or condition of the premises, including any and all liability of Landlord for damage to vehicles parked on the leased premises. Such insurance shall be in an amount of not less than _____ **[\$5,000,000 minimum.] [A greater amount should be inserted herein if warranted by the proposed use.]** combined single limit for bodily injury and property damage. The limits of such insurance shall not limit the liability of Tenant. All insurance required hereunder shall be with companies to be approved by Landlord. All such policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. Said policies shall name the State as an additional insured and shall insure against the contingent liabilities, if any, of Landlord and the officers, agents, and employees of Landlord and shall obligate the insurance carriers to notify Landlord, in writing, not less than thirty (30) days prior to the cancellation thereof, or any other change affecting the coverage of the policies. If said policies contain any exclusion concerning property in the care, custody or control of the insured, an endorsement shall be attached thereto stating that such exclusion shall not apply with regard to any liability of the State of California, its officers, agents, or employees. Tenant shall furnish to Landlord a Certificate of Insurance acceptable to Landlord within not more than ten (10) days after execution thereof. Landlord shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for Landlord and for members of the public using the leased premises, Landlord may require Tenant to obtain insurance sufficient in coverage, form and amount to provide adequate protection. Landlord's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required. Landlord shall notify Tenant in writing of changes in the insurance requirements; and if Tenant does not deposit copies of acceptable insurance policies with Landlord incorporating such changes within sixty (60) days of receipt of such notice, this Lease may be terminated, at Landlord's option, without further notice to Tenant, and be of no further force and effect.

[Additional sentence to be used with public entity tenants]

[Landlord acknowledges that Tenant may be self-insured. Tenant may elect to provide the insurance required by this Article in the form of self-insurance. If Tenant elects to exercise this option, Tenant shall so notify Landlord in writing and provide Landlord with a written statement explaining how it will provide Landlord with protection equivalent to that provided by the insurance policies required by this section, together with written evidence of the adequacy of this protection. Tenant's exercise of this option is subject to Landlord's approval. Tenant shall notify Landlord in writing not less than thirty (30) days prior to the effective date of the termination of its self-insurance coverage and shall obtain the insurance coverage required by this section effective on that termination date.]

10.3 Fire and Extended Coverage Insurance

Tenant shall obtain and keep in effect at all times during the term of this Lease fire and extended coverage insurance upon all buildings, structures and improvements constructed on the premises. Such policy or policies of insurance shall be for not less than one hundred percent (100%) of the full replacement value of the property covered and shall provide for payment of losses to Tenant. Landlord shall be named as an additional insured on all fire and extended coverage insurance policies placed on the buildings, structures and improvements on said premises. The full replacement value of the buildings, structures and improvements to be insured under this section shall be determined by the company issuing the insurance policy at the time the policy is initially obtained. Not more frequently than once each year, either party shall have the right to notify the other party that it elects to have the replacement value redetermined by an insurance company. The redetermination shall be made promptly and in accordance with the rules and practices of the Board of Fire Underwriters, or a like board recognized and generally accepted by the insurance company, and each party shall be promptly notified of the results by the company. The insurance policy shall be adjusted according to the redetermination

10.4 Failure to Procure and Maintain Insurance

If Tenant fails to procure or maintain the insurance required by this Article in full force and effect, Landlord may take out insurance and pay the premiums thereon. The repayment of those premiums, plus payment of interest as provided in Section 22.11 from the date such insurance is obtained, shall be the sole obligation of Tenant and shall be deemed to be additional rental and payable as such on the next day upon which rent becomes due hereunder. In addition, if Tenant fails to procure or maintain the insurance required by this Article, Tenant shall cease and desist from operating any business on the premises and the improvements erected thereon and shall prevent members of the public from gaining access to the premises during any period in which such insurance policies are not in full force and effect.

10.5 Waiver of Subrogation

Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss of or damage to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damages. The party obtaining the policies of insurance required hereunder shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in the Lease.

ARTICLE 11. DAMAGE OR DESTRUCTION

11.1 Duty to Repair or Restore

If during the term of this Lease any building or improvement on, in or appurtenant to the land at the commencement of the term or thereafter erected thereon shall be destroyed or damaged in whole or in part by fire or other cause, or shall be declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Tenant shall, within ten (10) days of the occurrence of such event, give to Landlord immediate notice thereof, and Tenant shall within sixty (60) days commence, and diligently pursue to completion, the repair, replacement or reconstruction of the same, at least to the extent of the value and as nearly as possible to the character of

the buildings and improvements existing immediately prior to the occurrence of such event; and Landlord shall in no event be called upon to repair, replace or rebuild any such buildings or improvements. All buildings and improvements shall be repaired, replaced or reconstructed in accordance with the standards and requirements contained in Article 7. Tenant shall continue to pay rent hereunder during the period said improvements shall be damaged or destroyed.

11.2 Relief for Substantial Loss of Area and Damage or Destruction During Final Years of Term

Tenant is relieved of the obligation to, but may, repair, restore, or reconstruct improvements damaged or destroyed during the final five (5) years of the term if (a) more than thirty-five percent (35%) of the improvements constructed on the premises are damaged or destroyed; (b) the damage or destruction is uninsured and is not required to be insured under any provision of this Lease; and (c) Tenant complies with all the following conditions:

(1) Gives Landlord notice of damage or destruction promptly but not later than ten (10) days after the event, detailing facts that qualify the casualty under this provision.

(2) Is not in default under any provision or condition of this Lease.

(3) Within ten (10) days after giving the above notice, effectively transfers to Landlord all right, title and interest in the security deposit.

(4) Continues to make all payments when due as required by the provisions of this Lease, applying the security deposit to payments latest in time under the Lease, provided that Landlord may, by notice given at any time after Tenant's notice of the damage or destruction, elect to terminate the Lease at a date stated in Landlord's notice and to forgive all rent for the period following that date.

(5) Pays in full, or has paid in full, any outstanding indebtedness incurred by Tenant and secured by an encumbrance or encumbrances on the leasehold.

(6) Delivers possession of the premises to Landlord and quitclaims all right, title and interest in the land and improvements promptly upon ceasing to do business on the premises.

(7) Causes to be discharged all liens and encumbrances resulting from any act or omission of Tenant.

(8) Removes or deposits the cost of removing all fixtures and improvements if Landlord so elects under the provisions of Article 8.

Tenant shall also be relieved of the obligations to repair, restore or reconstruct improvements because of an insured loss if Tenant complies with all the above provisions and also assigns all net proceeds from the insurance settlement to Landlord. "Net proceeds" shall mean the full amount of the insurance settlement less any amount paid to beneficiaries under deeds of trusts approved by Landlord pursuant to Section 19.9. Landlord and Tenant hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code and waive the provisions of any other statutes which relate to the termination of a lease when the leased property is destroyed. Landlord and Tenant agree that such an event shall be governed by the terms of this Lease.

ARTICLE 12. PAYMENT OF TAXES

Tenant agrees to pay and discharge, or cause to be paid and discharged when due, before the same become delinquent, all taxes, assessments, impositions, levies and

charges of every kind, nature and description, whether general or special, ordinary or extraordinary, which may at any time or from time to time during the term of this Lease, by or according to any law or governmental, legal, political, or other authority whatsoever, directly or indirectly, be taxed, levied, charged, assessed or imposed upon or against, or which shall be or may be or become a lien upon said premises or any buildings, improvements or structures at any time located thereon, or any estate, right, title or interest of Tenant in and to said premises, buildings, improvements or structures. Tenant shall pay when due, before delinquency, personal property taxes on fixtures, equipment and facilities owned by Tenant, whether or not the same have become so fixed to the land as to comprise a part of the real estate.

Tenant understands that any possessory interest of Tenant created in the leased premises by this Lease may be subject to property taxation and that Tenant may be liable for payment of any such tax levied on such interest. Any obligation of Tenant under this Article, including possessory interest tax that the city or county may impose upon Tenant's interest herein, shall not reduce any rent due Landlord hereunder and any such obligation shall become the liability of and be paid by Tenant. In the event Tenant shall fail to discharge any of the above obligations, Landlord may, at its option, discharge the same and the amount so paid by Landlord, plus interest as provided in Section 22.11 from the date of payment by Landlord, shall be added to the rentals next accruing under this Lease. Tenant may, at its own expense, and before delinquency occurs, contest, object to or oppose the legality, validity or amount of such taxes. Landlord shall not be required to join in any proceeding or contest brought by Tenant. Immediately upon the final determination of the proceeding or contest, Tenant shall pay or discharge any decision or judgment rendered, together with all costs, charges, interest and penalties incident to the decision or judgment. If Tenant contests or seeks a reduction in the taxes as provided in this Article, Tenant shall, before the commencement of the proceedings or contest, furnish to Landlord security or other evidence satisfactory to Landlord that Landlord and the Premises will be held harmless from any damage arising out of the proceedings or contest and assuring the payment of any judgment that may be rendered. Any default in the payment of any of the obligations set forth in this Article shall, at the option of Landlord, be considered a default under the terms of this Lease.

ARTICLE 13. RIGHT OF ENTRY

13.1 Inspection, Maintenance, Construction and Operation of Freeway Structures

Landlord, through its agents or representatives, and other city, county, state and federal agencies, through their agents or representatives, shall have full right and authority to enter in and upon the premises and any building or improvements situated thereon at any and all reasonable times during the term of this Lease for the purpose of inspecting the same without interference or hindrance by Tenant, its agents or representatives. [If at any time miniwarehouse or storage units are constructed on the premises, Tenant shall have at least one resident manager on the premises at all times during normal business hours. Said resident manager shall be able to provide immediate access to the interior of all units on the premises upon the request of Landlord, through its agents or representatives, or other city, county, state and federal agencies, through their agents or representatives. Tenant, through its resident manager, shall maintain a double set of keys to each of the units to enable Landlord to obtain the immediate access to which it is entitled under this Article. All agreements between Tenant and users of

miniwarehouse or storage units shall contain provisions which (a) describe in full Landlord's right to inspect the interior of those units as set forth in this Article, (b) prohibit the storage of hazardous substances in those units, and (c) require the users to comply with all the terms of this Lease.] [**Alternate section required for mini-storage developments**]

Landlord further reserves the right of entry for the purpose of inspecting the premises, or the doing of any and all acts necessary or proper on said premises in connection with the protection, maintenance, reconstruction, and operation of the freeway structures and its appurtenances; provided, further, that Landlord reserves the further right, at its discretion, to immediate possession of the same in case of any national or other emergency, or for the purpose of preventing sabotage, and for the protection of said freeway structures, in which event the term of this Lease shall be extended for a period equal to the emergency occupancy by Landlord, and during said period Tenant shall be relieved, to the degree of interference, from the performance of conditions or covenants specified herein. Landlord further reserves the right of entry by any authorized officer, engineer, employee, contractor or agent of the Landlord for the purpose of performing any maintenance activities upon the property which Tenant has failed to perform. All agreements which Tenant enters into for the sublease or use of all or any part of the leased premises shall contain a provision, approved by Landlord, which describes Landlord's right of entry as set forth in this Article.

13.2 Retrofitting of Freeway Structures

Tenant understands and agrees that Landlord may be required to perform retrofit work on all or a part of the freeway structures which are situated on and above the premises. Landlord shall have the right to impose such restrictions on Tenant's right to enter, occupy, and use the premises and to construct improvements thereon as Landlord deems are necessary to enable it to complete construction of all freeway structural retrofit work without interference from Tenant.

In the event Landlord determines that it needs to obtain possession of all or a portion of the premises, or needs to place restrictions on Tenant's use of the premises, Landlord shall, at least thirty (30) days prior to the effective date of the commencement of such possession or restrictions notify Tenant in writing describing the extent of the possession or restrictions and the effective date of their commencement. Upon the effective date of said notice, Tenant shall peaceably surrender possession of the premises and comply with the restrictions as stated therein. The minimum monthly rent stated in Section 4.1, as adjusted and reevaluated in accordance with Section 4.2 and 4.3, shall be reduced by an amount equal to the proportion which the area of the portion of the premises which Tenant is restricted from using or which has been surrendered to Landlord bears to the total area of the leased premises. This reduction in rent shall be Tenant's sole remedy against Landlord for Tenant's inability to possess or use the entire area of the premises, and Tenant expressly agrees to hold Landlord harmless from any and all liability for, and expressly waives any right it may have to recover against Landlord, damages to the premises, any improvements constructed on the premises, and waives its right to use or possess any portion of the premises or improvements thereon, and damages to any other property, project or operation caused by Landlord's possession, imposition of restrictions or Tenant's inability to use or possess all or any portion of the premises. In addition, Tenant expressly recognizes that it is not entitled to receive

benefits under the federal or state Uniform Relocation Assistance Acts (United States Code, title 42, Section 4601, et seq.; California Government Code, Section 7260, et seq.) as a result of Landlord's use or possession of any portion of the premises.

Tenant shall conduct its operations on the premises in such a manner so as not to interfere with Landlord's or its contractor's performance of any structural retrofit work done on or above the premises. Tenant acknowledges that the performance of the structural retrofit work may cause damage to paving or other improvements constructed by Tenant on the premises. Tenant expressly agrees to hold Landlord harmless from all such damage to its improvements, except that at the conclusion of the retrofit work, Landlord shall restore the premises to their preexisting condition at no cost to Tenant.

ARTICLE 14. CONDEMNATION BY PUBLIC ENTITIES OTHER THAN LANDLORD

14.1 Definitions

(a) "Condemnation" means (1) the exercise of the power of eminent domain, whether by legal proceedings or otherwise, by a public entity having that power, that is, a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under the threat of condemnation or while legal proceedings in condemnation are pending.

(b) "Award" means all compensation, sums, or anything of value awarded, paid or received upon a total or partial condemnation of the leased premises.

(c) "Substantial taking" means a taking of a portion of the leased premises by condemnation which, assuming a reasonable amount of reconstruction on the remainder, substantially impairs Tenant's ability to use the remainder for the purposes permitted under this Lease.

14.2 Termination of Lease as to Part Condemned

In the event the whole or any part of the premises is taken by condemnation by a public entity, other than Landlord, in the lawful exercise of its power of eminent domain, this Lease shall cease as to the whole or the part condemned upon the date possession of the whole or that part is taken by the public entity.

14.3 Partial Taking

If a part of the leased premises is taken by condemnation but there is no substantial taking of the premises, Tenant shall continue to be bound by the terms, covenants, and conditions of this Lease. However, if the fair rental value of the remainder will be less than the rent required by this Lease, the minimum monthly rent and adjusted minimum monthly rent shall be reduced to an amount equal to the fair rental value as of the date possession of the part is taken by the public entity.

If the part taken by condemnation constitutes a substantial taking of the leased premises, Tenant may elect to:

(a) Terminate this Lease and be absolved of obligations hereunder which have not accrued at the date possession is taken by the public entity; or

(b) Continue to occupy the remainder of the premises and remain bound by the terms, covenants and conditions of this Lease. If Tenant elects to continue to occupy the remainder, and if the fair rental value of the remainder will be less than the rent required by this Lease, the minimum monthly rent and adjusted minimum monthly rent shall be reduced to the fair rental value as of the date possession of the part is taken by the public entity.

Tenant shall give notice in writing of its election to terminate this Lease hereunder within thirty (30) days of the date possession of the part is taken by the public entity. If Tenant fails to give Landlord its written notice of termination within the time specified, this Lease shall remain in full force and effect except that the minimum monthly rental shall be reduced as provided in this section.

If it continues to occupy the remainder, Tenant, whether or not the award upon the taking by condemnation is sufficient for the purpose, shall, at its expense, within a reasonable period of time, commence and complete restoration of the remainder of the leased premises as nearly as possible to its value, condition and character immediately prior to such taking; provided, however, that in the case of a taking for temporary use, Tenant shall not be required to effect restoration until such taking is terminated. Tenant shall submit to Landlord its plans for the restoration of the remainder within ninety (90) days of the date possession of the part is taken by the public entity.

14.4 Adjustment of Rent

Should a portion of the premises be condemned and the rent be reduced as provided above, the reduced rent shall continue to be subject to adjustment and reevaluation in accordance with Article 4.

14.5 Compensation

Landlord shall be entitled to receive and shall receive all compensation for the condemnation of all or any portion of the premises by exercise of eminent domain except as hereinafter provided. Tenant shall be entitled to that portion of said compensation which represents the present worth as of the date possession is taken by the public entity of the remaining use under the Lease of all improvements constructed by Tenant on the leased premises located within the part taken by the public entity. Tenant may also assert a claim for loss of business goodwill under the provisions of Section 1263.510 of the California Code of Civil Procedure. Tenant shall assert no claim for loss of bonus value. For the purposes of this Article, "bonus value" means that value attributable to the fact that the rental rate Tenant is obligated to pay under this Lease is less than the fair market lease rate of the premises as defined in Section 4.4 above.

If all or a portion of the leased premises is condemned at a time when Tenant possesses an interest in real property located outside the leased premises (hereinafter called "outside property"), Tenant may claim entitlement to an award of damages accruing to the outside property by reason of the severance therefrom of the condemned portion of the leased premises as provided in the Eminent Domain Law (California Code of Civil Procedure Sections 1230.010 through 1273.050).

ARTICLE 15. CONDEMNATION BY LANDLORD

15.1 Definitions

(a) "Condemnation" means (1) the exercise of the power of eminent domain, whether by legal proceedings or otherwise, by Landlord, and (2) a voluntary sale or transfer to Landlord, either under the threat of condemnation or while legal proceedings in condemnation are pending.

(b) "Award" means all compensation, sums, or anything of value awarded, paid or received upon a total or partial condemnation of the leased premises.

(c) "Substantial taking" means a taking of a portion of the leased premises by condemnation which, assuming a reasonable amount of reconstruction on the remainder,

substantially impairs Tenant's ability to use the remainder for the purposes permitted under this Lease.

15.2 Termination of Lease as to Part Condemned

Tenant acknowledges that Landlord has the power of eminent domain to acquire property for public purposes and that Landlord may exercise that power to take all or any part of the leased premises by condemnation. In the event the whole or any part of the premises is taken by condemnation by Landlord in the lawful exercise of its power of eminent domain, this Lease shall cease as to the whole or the part condemned upon the date possession of the whole or that part is taken by Landlord. If Landlord exercises its power of condemnation to acquire the whole or any part of the premises for a transportation-related public use, Tenant hereby specifically waives all objections to Landlord's right to take, and the only issue to be resolved in any condemnation action shall be the amount of compensation to which Tenant is entitled under Section 15.5.

15.3 Partial Taking

If a part of the leased premises is taken by condemnation but there is no substantial taking of the premises, Tenant shall continue to be bound by the terms, covenants, and conditions of this Lease. However, if the fair rental value of the remainder will be less than the rent required by this Lease, the minimum monthly rent and adjusted minimum monthly rent shall be reduced to an amount equal to the fair rental value as of the date possession of the part is taken by Landlord.

If the part taken by condemnation constitutes substantial taking of the leased premises, Tenant may elect to:

a) Terminate this Lease and be absolved of obligations hereunder which have not accrued at the date possession is taken by the Landlord; or

(b) Continue to occupy the remainder of the premises and remain bound by the terms, covenants and conditions of this Lease. If Tenant elects to continue to occupy the remainder, and if the fair rental value of the remainder will be less than the rent required by this Lease, the minimum monthly rent and adjusted minimum monthly rent shall be reduced to the fair rental value as of the date possession of the part is taken by Landlord.

Tenant shall give notice in writing of its election to terminate this Lease hereunder within thirty (30) days of the date possession of the part is taken by Landlord. If Tenant fails to give Landlord its written notice of termination within the time specified, this Lease shall remain in full force and effect except that the minimum monthly rental shall be reduced as provided in this section.

If it continues to occupy the remainder, Tenant, whether or not the award upon the taking by condemnation is sufficient for the purpose, shall, at its expense, within a reasonable period of time, commence and complete restoration of the remainder of the leased premises as nearly as possible to its value, condition and character immediately prior to such taking; provided, however, that in the case of a taking for temporary use, Tenant shall not be required to effect restoration until such taking is terminated. Tenant shall submit to Landlord its plans for the restoration of the remainder within ninety (90) days of the date possession of the part is taken by Landlord.

15.4 Adjustment of Rent

Should a portion of the premises be condemned and the rent be reduced as provided above, the reduced rent shall continue to be subject to adjustment and reevaluation in accordance with Article 4.

15.5 Compensation

Upon Landlord's exercise of its power of condemnation to acquire all or any part of the leased premises, Tenant shall only be entitled to compensation which represents the present worth as of the date possession is taken by Landlord of the remaining use under the Lease of all improvements constructed by Tenant on the leased premises located within the part taken by Landlord. Tenant hereby waives its right to receive, and it shall make no claim for, loss of business goodwill under the provisions of Section 1263.510 of the California Code of Civil Procedure.

Tenant shall assert no claim for loss of bonus value. For the purposes of this Article, "bonus value" means that value attributable to the fact that the rental rate Tenant is obligated to pay under this Lease is less than the fair market lease rate of the premises as defined in Section 4.4 above.

If all or a portion of the leased premises is condemned at a time when Tenant possesses an interest in real property located outside the leased premises (hereinafter called "outside property"), Tenant shall not be entitled to any compensation for damages otherwise accruing to the outside property by reason of the severance therefrom of the condemned portion of the leased premises.

ARTICLE 16. UTILITIES

Tenant shall pay when due, and shall hold Landlord harmless from any liability for, all charges for water, gas, heat, light, power, telephone, sewage, air conditioning and ventilating, scavenger, janitorial and landscaping services and all other materials and utilities supplied to the premises. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service furnished to the premises, and no such failure or interruption shall entitle Tenant to terminate this Lease.

ARTICLE 17. LIENS

17.1 Exemption of Landlord from Liability

Tenant shall at all times indemnify and save Landlord harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment or facilities within the premises, and from the cost of defending against such claims, including attorney fees.

17.2 Tenant's Obligations

In the event a lien is imposed upon the premises as a result of such construction, repair, alteration or installation, Tenant shall either:

- (a) Record a valid Release of Lien, or
- (b) Deposit sufficient cash with Landlord to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to a lienholder claim, or
- (c) Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the premises from the claim of the lien and from any action brought to foreclose the lien.

Should Tenant fail to accomplish one of the three optional actions within 15 days after the filing of such a lien, the Lease shall be in default and shall be subject to immediate termination.

ARTICLE 18. DEFAULT

18.1 Default

The occurrence of any of the following shall constitute a material breach and default of this Lease by Tenant.

(a) Any failure by Tenant to pay rent or any other monetary sums required to be paid hereunder, where such failure continues for ten(10) days after written notice thereof has been given by Landlord to Tenant.

(b) The abandonment or vacation of the premises by Tenant. Failure to occupy and operate the premises for thirty (30) consecutive days following the mailing of written notice from Landlord to Tenant calling attention to the abandonment shall be deemed an abandonment or vacation.

(c) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such default is such that it cannot be reasonably cured within such thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

(d) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets, where possession is not restored to Tenant within forty-five (45) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets, where such seizure is not discharged within thirty (30) days.

18.2 Landlord's Remedies

In the event of any material default or breach by Tenant, Landlord may at any time thereafter, without limiting Landlord in the exercise of any right of remedy at law or in equity which Landlord may have by reason of such default or breach:

(a) Maintain this Lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating Tenant's right to possession, irrespective of whether Tenant shall have abandoned the premises. Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue the lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). In the event Landlord elects not to terminate the Lease, Landlord shall have the right to attempt to re-let the premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the premises as Landlord deems reasonable and necessary without being deemed to have elected to terminate the Lease, including removal of all persons and property from the premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such re-letting occurs, this Lease shall terminate automatically

upon the new tenant taking possession of the premises. Notwithstanding that Landlord fails to elect to terminate the Lease initially under this subparagraph, Landlord at any time during the term of this Lease may elect to terminate this Lease by virtue of such previous default of Tenant.

(b) Terminate Tenant's right to possession by any lawful means, in which case this Lease shall immediately terminate and Tenant shall immediately surrender possession of the premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the following:

(i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that is proved could be reasonably avoided; plus

(iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom; plus

(v) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable State law. Upon any such re-entry Landlord shall have the right to make any reasonable repairs, alterations or modifications to the premises, which Landlord in its sole discretion deems reasonable and necessary. As used in subparagraphs (i) and (ii), above, the "worth at the time of award" is computed by including interest on the principal sum at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco from the date of default. As used in subparagraph (iii), above, the "worth at the time of award" is computed by discounting such amount at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco at the time of award. The term "rent" as used in this Article shall be deemed to be and to mean rent to be paid pursuant to Article 4 and all other monetary sums required to be paid by Tenant pursuant to the terms of this Lease.

18.3 Late Charges

Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after such amount shall be due, a late charge equal to one and one-half percent (1.5%) of the payment due and unpaid plus \$100.00 shall be added to the payment, and the total sum shall become immediately due and payable to Landlord. An additional charge of one and one-half percent (1.5%) of such payment, excluding late charges, shall be added for each additional month that such payment remains unpaid. Landlord shall apply any monies received from Tenant first to any accrued delinquency charges and then to any other payments due under the Lease. The parties hereby agree that such late charges represent a fair and reasonable estimate of

the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

18.4 Landlord's Right to Cure Tenant's Default

At any time after Tenant is in default or material breach of this Lease, Landlord may cure such default or breach at Tenant's cost. If Landlord at any time, by reason of such default or breach, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest as provided in Section 22.11 from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

ARTICLE 19. ASSIGNMENTS, SUBLEASES AND ENCUMBRANCES

19.1 Voluntary Assignments, Subleases and Encumbrances

Tenant shall not voluntarily assign, transfer or encumber its interest in this Lease or in the premises, or sublet all or any part of the premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the premises without first obtaining Landlord's written consent and the concurrence of the Federal Highway Administration, unless otherwise expressly permitted by the provisions of this Article.

Landlord may withhold its consent to any such assignment, transfer, encumbrance or sublease unless all of the following express conditions are satisfied:

(a) Landlord receives compensation from Tenant upon the assignment, transfer, sale, sublease or encumbrance of any of Tenant's rights in the premises in an amount calculated in accordance with the provisions of Section 4.5.

(b) Landlord receives and has the right to receive fifty percent (50%) of any and all consideration, whether in present payments or in future payments, which Tenant receives from an assignee, transferee or subtenant in excess of the amount of rent Tenant is obligated to pay to Landlord under this Lease.

(c) A new minimum monthly rental rate is established in accordance with the provisions of Section 4.7.

Tenant's failure to obtain Landlord's required written approval of any assignment, transfer, sublease or encumbrance shall render such assignment, transfer, sublease or encumbrance void. Occupancy of the leased premises by a prospective transferee, sublessee or assignee before approval of the transfer, sublease or assignment by Landlord shall constitute a breach of this Lease. Landlord's consent to any assignment, sublease or encumbrance shall not constitute a waiver of any of the terms, covenants or conditions of this Lease. Such terms, covenants and conditions shall apply to each and every assignment, sublease and encumbrance of this Lease and shall be severally binding upon each and every party thereto. Any document to mortgage, pledge, hypothecate, encumber, transfer, sublet, or assign the leased premises or any part thereof shall incorporate directly or by reference all the provisions of this Lease.

19.2 Change in Partnership

If Tenant is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law, or the dissolution of the partnership, shall be deemed a voluntary assignment.

19.3 Change in Tenants

If Tenant consists of more than one person, a purported assignment, voluntary, involuntary or by operation of law, from one to another shall be deemed a voluntary assignment.

19.4 Change in Corporation

If Tenant is a corporation, any dissolution, merger, consolidation, or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of ___% of the value of the assets of Tenant, shall be deemed a voluntary assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least ___% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding, and entitled to vote for the election of directors.

19.5 Assignment of Rent from Subtenants

Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the premises as permitted by this Lease, and Landlord, as assignee and attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to collect such rent.

19.6 Information to be Supplied to Landlord

Except as to short-term subleases and assignments described in Section 19.7, Tenant shall supply Landlord with the necessary information on all persons or firms to which Tenant proposes to sublet or assign any of its interest in the premises, or which might establish rights to enter, control, or otherwise encumber the premises by reason of any agreement made by Tenant. In addition, with respect to any proposed sublease or assignment, Tenant shall provide Landlord with:

- (a) a copy of all documents relating thereto,
- (b) a statement of all terms and conditions of said transaction, including the consideration therefor, and
- (c) a copy of the financial statement of the prospective subtenant or assignee.

19.7 Approval of Short-Term Subleases and Assignments of Stock

(a) Notwithstanding the provisions of Section 19.1, subleases for a period of five years or less and for not more than thirty percent (30%) of the leased premises (hereinafter referred to as short-term subleases) for a use specified in Section 5.1 or assignments of less than a controlling percentage of the capital stock of Tenant shall not be subject to the requirement of prior approval by Landlord. Tenant shall not, however, be precluded from requesting such prior approval.

(b) Tenant must notify Landlord within thirty (30) days of the execution of all such short-term subleases or assignments of stock by providing Landlord with:

- (1) a copy of all documents relating thereto, and
- (2) a statement of all terms and conditions of said transaction, including the consideration therefor.

(c) Should Tenant choose not to obtain Landlord's additional prior approval of such short-term subleases or assignments of stock, Landlord reserves the right to disallow any unapproved short-term subleases or assignments of stock if any of the following conditions prevail:

(1) Tenant, its successors, or assigns, are in default in the terms of this Lease at the time of execution of the short-term sublease or assignment of the stock whether or not notice of default has been given by Landlord.

(2) Subtenant or assignee has not agreed in writing to keep, perform, and be bound by all the terms, covenants, and conditions of this Lease.

(3) Subtenant's use is in conflict with the terms of this Lease.

(4) All terms, covenants, and conditions of the short-term sublease or assignment of stock, including the consideration therefor of any and every kind, have not been revealed in writing to Landlord.

(5) Additions to, alteration of existing structures, or construction of new structures by subtenant or by Tenant as a result of short-term sublease, have not been approved by Landlord and are not in compliance with all government regulations and ordinances.

Landlord shall notify Tenant in writing of the disallowance of any such short-term sublease or assignment of stock for any of the above reasons, and Tenant shall immediately proceed to remove any persons or firms from the leased premises that were indicated by said notice. Tenant's failure to comply within sixty (60) days after Landlord sends its notice shall constitute a breach of this Lease.

19.8 Processing Fees for Assignments, Subleases and Encumbrances

(a) A fee of one thousand dollars (\$1000) shall be paid to Landlord for processing each consent to mortgage, pledge, hypothecation, or encumbrance submitted to Landlord except for the initial such document submitted to Landlord as required by this Lease. This processing fee shall be deemed earned by Landlord when paid and shall not be refundable.

(b) A fee of one thousand dollars (\$1000) shall be paid to Landlord for processing each consent to assignment, transfer, or sublease to Landlord as required by this Lease. This processing fee shall be deemed earned by Landlord when paid and shall not be refundable.

(c) If a processing fee has been paid by Tenant for another phase of the same transaction, a second fee will not be charged.

(d) The amounts specified above for processing fees shall be automatically adjusted at the end of the first year of this Lease and every year thereafter in accordance with an annual fee schedule adopted by Landlord. Landlord shall make said fee schedule available to Tenant upon receiving a request therefor.

19.9 Encumbrances

(a) Landlord and Tenant hereby acknowledge and agree that Tenant intends to encumber by deed of trust Tenant's interest in the leased premises, for the purpose of constructing improvements thereon, and/or the permanent financing of new improvements. Any such encumbrance is void without the prior written consent of Landlord. Tenant must secure the financing from a financial institution (hereinafter called "Lender") qualified to do business in the State of California.

(b) Landlord agrees that it will not terminate this lease because of any default or breach thereunder on the part of Tenant if the Lender or the trustee under such deed of trust, within ninety (90) days after service of written notice on the Lender by Landlord of its intention to terminate said Lease for such default or breach, shall:

(1) Cure such default or breach if the same can be cured by the payment or expenditure of money provided to be paid under the terms of said Lease, or if such default or breach is not so curable, cause the trustee under the deed of trust to commence and thereafter to diligently pursue to completion steps and proceedings for the exercise of the power of sale under and pursuant to the trust deed in the manner provided by law, and

(2) Keep and perform all of the covenants and conditions of this Lease requiring the payment or expenditure of money by Tenant until such time as the leasehold shall be sold upon foreclosure pursuant to the trust deed, or shall be released or reconveyed thereunder, or shall be transferred upon judicial foreclosure; provided, however, that if the lender or the trustee under the trust deed shall fail or refuse to comply with any and all of the conditions of this section, then and thereupon Landlord shall be released from the covenants of forbearance herein contained, and all rights of Tenant and/or Lender and those who claim under Tenant, under this Lease, shall terminate.

(c) In the event of a judicial foreclosure sale or trustee's sale of Lender's security interest pursuant to the laws of the State of California, or an assignment in lieu of foreclosure, the transferee, be it Lender or others, shall succeed to all of the right, title and interest of Tenant.

(d) Landlord shall give Lender a written notice of any default by Tenant under this Lease which notice shall be given concurrently with the notice to Tenant.

The prior written consent of Landlord shall not be required

(1) to a transfer of this Lease at foreclosure sale under the trust deed, under judicial foreclosure or by an assignment in lieu of foreclosure; or

(2) to any subsequent transfer by the Lender if the Lender is an established bank, savings and loan association or insurance company, and is the purchaser at such foreclosure sale; provided that in either such event the Lender forthwith gives notice to the Landlord in writing of any such transfer, setting forth the name and address of the transferee, the effective date of such transfer and the express agreement of the transferee assuming and agreeing to perform all of the obligations of this Lease, together with a copy of the document of which such transfer was made and the payment to Landlord of the processing fee provided in Section 19.8. Any transferee under this section shall be liable to perform the obligations of the Tenant under this Lease only so long as such transferee holds title to the leasehold. Any subsequent transfer of the leasehold shall not be made without the prior written consent of the Landlord and shall be subject to the conditions relating thereto as set forth in this Lease.

(e) Upon and immediately after the recording of the trust deed, Tenant at Tenant's expense, shall cause to be recorded in the office of the Record of _____ County, California, a duly executed and acknowledged written request for a copy of any notice of default and of any notice of sale under the trust deed as provided by the statutes of the State of California relating thereto. Concurrently with the execution of the consent to a trust deed, Tenant shall furnish to Landlord a complete copy of the trust deed and note secured thereby, together with the name and address of the holder thereof.

(f) The trust deed and all rights acquired thereunder shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of Landlord hereunder, except as otherwise provided therein. In the event of any conflict between the provisions of this Lease and the provisions of any trust deed, the provisions of this Lease shall control.

(g) No trust deed which Tenant may execute or create at any time shall include the Landlord's right, title and interest in and to the demised premises, nor shall any such trust deed subordinate or be deemed to subordinate the fee title to the demised premises or Landlord's interest in this Lease to the security interest created by such trust deed. It is the intention and agreement of the parties hereto that during the entire term of this Lease Landlord's right, title and interest in and to the demised premises shall not be subject to any liens or encumbrances of any kind or nature created either by Tenant or by Landlord. Nothing contained in any such trust deed, and no such trust deed, shall release or be deemed to release Tenant from the full and faithful observance and performance of any covenants and conditions in this Lease contained and on the part of Tenant to be observed and performed, nor be deemed to constitute a waiver of any rights of Landlord hereunder and the terms, covenants and conditions of this Lease shall control in case of any conflict between this Lease and any such trust deed.

ARTICLE 20. NONDISCRIMINATION

Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

(1) no person, on the ground of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in the use of said facilities, (2) in connection with the construction of any improvements on said land and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors in the selection and retention of first-tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors, (3) such discrimination shall not be practiced against the public in its access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed or operated on, over, or under the premises, and (4) Tenant shall use the land in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Part 21 (49 C.F.R., Part 21) and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the Landlord shall have the right to terminate this Lease, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

ARTICLE 21. SECURITY DEPOSIT

Concurrently with Tenant's execution of this Lease, Tenant shall deposit with Landlord the sum of \$ [three months' minimum monthly rent] as a Security Deposit. Said sum shall be held by Landlord as a Security Deposit for the faithful performance by Tenant of all of the terms, covenants and conditions of this Lease to be kept and performed by Tenant during the term hereof. If Tenant defaults with respect to any provision of this Lease, including but not limited to the provisions relating to the payment of rent and any of the monetary sums due herewith, Landlord may use, apply or retain all or any part of this Security Deposit for the payment of any other amount which Landlord may spend by reason of Tenant's default or use it to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said Deposit is so used or applied, Tenant shall within ten (10) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount; Tenant's failure to do so shall be a material

breach of this Lease. Landlord shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant at the expiration of the Lease term and after Tenant has vacated the premises.

Within ten (10) days following any increase in the minimum monthly rent by adjustment or reevaluation under Article 4, Tenant shall deposit with Landlord a sum sufficient to increase the Security Deposit to an amount equal to three (3) times the amount of the adjusted or reevaluated minimum monthly rent.

ARTICLE 22. ADDITIONAL PROVISIONS

22.1 Quiet Enjoyment

Landlord covenants and agrees with Tenant that upon Tenant paying rent and other monetary sums due under the Lease and performing its covenants and conditions, Tenant shall and may peaceably and quietly have, hold and enjoy the premises for the term, subject however, to the terms of the Lease and of any of the mortgages or deeds of trust described above.

22.2 Captions, Attachments, Defined Terms

The captions of the Articles of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease. Exhibits attached hereto, and addendums and schedules initiated by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein. The words "Landlord" and "Tenant," as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. If there be more than one Landlord or Tenant, the obligations hereunder imposed upon Landlord or Tenant shall be joint and several. If the Tenants are husband and wife, the obligations shall extend individually to their sole and separate property as well as to their community property.

22.3 Entire Agreement

This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the premises and this agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents and representatives relative to the leasing of the premises are merged in or revoked by this agreement.

22.4 Severability

If any terms or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

22.5 Costs of Suit

If Tenant or Landlord shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of rent or possession of the premises, the losing party shall pay the successful party a reasonable sum for attorney's fees which shall be deemed to have accrued on the

commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Should Landlord, without fault on Landlord's part, be made a party to any litigation instituted by Tenant or by any third party against Tenant, or by or against any person holding under or using the premises by license of Tenant, or for the foreclosure of any lien for labor or materials furnished to or for Tenant or any such other person or otherwise arising out of or resulting from any act or transaction of Tenant or of any such other person, Tenant shall save and hold Landlord harmless from any judgment rendered against Landlord or the premises or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by Landlord in connection with such litigation.

22.6 Time, Joint and Several Liability

Time is of the essence of this Lease and each and every provision hereof, except as to the conditions relating to the delivery of possession of the premises to Tenant. All the terms, covenants and conditions contained in this Lease to be performed by either party if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and non-exclusive of any other remedy at law or in equity.

22.7 Binding Effect; Choice of Law

The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate section hereof; and all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California.

22.8 Waiver

No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Landlord in writing.

22.9 Surrender of Premises

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of the Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies.

22.10 Holding Over

If Tenant remains in possession of all or any part of the premises after the expiration of the term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month to month only and not a renewal hereof or an extension for any further term, and in such case, rent and other monetary sums due hereunder shall

be payable in the amount and at the time specified in this Lease and such month-to-month tenancy shall be subject to every other term, covenant and agreement contained herein.

22.11 Interest on Past Due Obligations

Except as expressly herein provided, any amount due to Landlord not paid when due shall bear interest at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco from the due date. Payment of such interest together with the amount due shall excuse or cure any default by Tenant under this Lease.

22.12 Recording

Tenant shall not record this Lease without Landlord's prior written consent, and such recordation shall, at the option of Landlord, constitute a noncurable default of Tenant hereunder. Either party shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes.

22.13 Notices

All notices or demands of any kind required or desired to be given by Landlord or Tenant hereunder shall be in writing and shall be deemed delivered forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the Landlord or Tenant respectively at the addresses set forth in Article 1.

22.14 No Reservation

Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease; it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

22.15 Corporate Authority

If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. If Tenant is a corporation, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Lease.

22.16 Force Majeure

If either Landlord or Tenant shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, governmental restrictions, regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Lease) or other cause without fault and beyond the control of the party obligated (except financial inability), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Nothing in this clause shall excuse Tenant from prompt payment of any rent, taxes, insurance or any other charge required of Tenant, except as may be expressly provided in this Lease.

22.17 Estoppel Certificates

Each party, within twenty (20) days after notice from the other party, shall execute and deliver to the other party, in recordable form, a certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate also shall state the amount of minimum

monthly rent, the dates to which the rent has been paid in advance, and the amount of any security deposit or prepaid rent.

22.18 Employee Carpool Program [Optional Section]

Tenant shall establish and maintain an active carpool program for its employees which shall include but not be limited to the following requirements:

(a) Tenant shall designate no less than ___ percent of the parking spaces available within the leased premises for the exclusive use of Carpool Vehicles. "Carpool Vehicles" are defined as those vehicles which are used to transport a minimum of three (3) individual employees.

(b) Tenant shall establish and maintain an employee carpool information system which shall include but not be limited to:

(1) A questionnaire for interested carpoolers.

(2) A list of the names of interested carpoolers with addresses.

(3) A bulletin board on the leased premises containing the information specified in (1) and (2) above together with other carpool encouragement information.

Tenant's employee carpool program shall be reviewed by Landlord periodically, and Tenant hereby consents to Landlord's conducting interviews with Tenant's employees regarding carpooling so long as said interviews do not prevent the employees from performing their normal work assignments.

Landlord shall assist Tenant, insofar as practicable, in establishing and maintaining an active employee carpool program.

Tenant shall join and actively participate in the _____ ridesharing program.

In Witness Whereof Landlord and Tenant have executed this Lease as of the date first written above.

LANDLORD: STATE OF CALIFORNIA,
DEPARTMENT OF TRANSPORTATION

TENANT:

By: _____

By: _____

By: _____

By: _____